

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,  
AMERICAN AIRLINES, INC.,  
BLOOMBERG, L.P.,  
CONTINENTAL AIRLINES, INC.,  
UNITED PARCEL SERVICE, INC.,

Defendants.

CASE NO. 08-CV-00447-LED

**JURY TRIAL DEMANDED**

**PLAINTIFF AND COUNTERDEFENDANT EMG TECHNOLOGY LLC'S**  
**ANSWER TO COUNTERCLAIM OF CONTINENTAL AIRLINES, INC.**

Pursuant to Fed . R. Civ. P. 8(b), EMG Technology, LLC ("EMG") hereby responds to the Counterclaim of Continental Airlines, Inc. ("Continental") as follows. Unless specifically admitted, EMG generally denies all allegations in the Counterclaim. EMG expressly denies that Continental is entitled to any relief whatsoever in connection with its Counterclaim, including, but not limited to, all relief requested in Continental's Prayer for Relief.

**PARTIES**

1. EMG admits the allegations contained in Paragraph 1.
2. EMG admits the allegations contained in Paragraph 2.

**JURISDICTION AND VENUE**

3. EMG admits the allegations contained in Paragraph 3.
4. EMG admits that this Court is a proper venue for this action. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 4.

5. EMG admits that it has charged Continental with committing acts of infringement of the `845 patent, and that an actual controversy exists between EMG and Continental concerning the validity, and scope of the `845 Patent and with respect to the liability for the alleged infringement thereof by Continental. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 5.

### **FIRST COUNTERCLAIM**

#### **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

6. EMG incorporates by reference its responses to Paragraphs 1-5 above as though fully set forth herein.

7. EMG denies the allegations contained in Paragraph 7.

### **SECOND COUNTERCLAIM**

#### **DECLARATORY JUDGMENT OF INVALIDITY**

8. EMG incorporates by reference its responses to Paragraphs 1-7 above as though fully set forth herein.

9. EMG denies the allegations contained in Paragraph 9.

10. EMG denies the allegations contained in Paragraph 10.

**PRAYER FOR RELIEF**

WHEREFORE, EMG prays that this Court enter judgment against Continental as follows:

- (a) Dismissing Continental's Counterclaim with prejudice and ordering that Continental is entitled to no recovery on the Counterclaim;
- (b) Ordering that this is an exceptional case pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and
- (c) Awarding EMG such other and further relief as this Court deems just and appropriate.

DATED: April 17, 2009

Respectfully Submitted,

**OF COUNSEL:**

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By: /s/ Charles Ainsworth

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 17th day of April, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth

Charles Ainsworth